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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1668**

**Introduced by Assembly Member Knight  
(Coauthors: Assembly Members Cook and Jeffries)**

January 20, 2010

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An act to amend Sections ~~34902, 36512, 57377, and 57379~~ 31479.1, 34873, 34875, 34900, 34901, 34902, 36508, 36511, 36512, 36515, 36516.1, 36516.5, 36804, 36811, 50271, 57377, 57379, and 65063.7 of the Government Code, *and to amend Sections 40225 and 40326 of the Health and Safety Code*, relating to local government.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1668, as amended, Knight. Local government: city councils.

(1) Existing law requires a city council to, within 30 days of a vacancy in an elective office, fill that vacancy by appointment or call a special election to fill the vacancy, as specified.

This bill would require the city council to, within 60 days of a vacancy in an elective office, fill that vacancy by appointment or call a special election to fill the vacancy, as specified.

(2) Existing law specifies the procedures for election of, and terms of office for, city council members and elective officers following an incorporation of a city.

This bill would revise the initial terms of office for city council members and elective officers following an incorporation of a city.

(3) *Existing law specifies that any statutory reference to “councilman” or “councilmen” also means and includes “councilwoman” or “councilwomen.” Under existing law, the terms “councilman” or “councilmen” are used in various provisions, including, among others, the election of councilmen by or from districts, appointments made by councilmen, and service by councilmen on regional district boards. Existing law refers to the mayor as “he” or “him” with regard to attendance at meetings of a city selection committee.*

*This bill would revise those provisions to instead refer to “council member” and would refer to the mayor only as “the mayor.”*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares that the  
2 administration of a special election to fill a vacant position on a  
3 city council often results in a large and sometimes unnecessary  
4 financial burden on the citizens of the affected city.

5 SEC. 2. *Section 31479.1 of the Government Code is amended*  
6 *to read:*

7 31479.1. Notwithstanding Section 31479 an elective or  
8 appointive county official may receive credit for service rendered  
9 as a city ~~councilman~~ *council member* even though ~~such~~ *that* service  
10 was not compensated.

11 This section shall not be operative in any county until it is  
12 adopted by a majority vote of the board of supervisors.

13 SEC. 3. *Section 34873 of the Government Code is amended to*  
14 *read:*

15 34873. An ordinance enacted pursuant to this article may be  
16 amended or repealed in the same manner; provided, the term of  
17 office of any ~~councilman~~ *council member* elected shall not be  
18 affected.

19 SEC. 4. *Section 34875 of the Government Code is amended to*  
20 *read:*

21 34875. The amendatory ordinance shall not be submitted to  
22 the voters if (a) one or more of the legislative districts do not close,

(b) one or more entire legislative districts are eliminated prior to the termination of the term of office of the ~~councilman~~ *council member* of or from the district, (c) the effect is that a greater number of ~~councilmen~~ *council members* will be qualified to hold office concurrently than are authorized by this article or the amendatory ordinance.

*SEC. 5. Section 34900 of the Government Code is amended to read:*

34900. At any general municipal election, or at a special election held for that purpose, the city council may submit to the electors the question of whether electors shall thereafter elect a mayor and four city ~~councilmen~~ *council members*, and whether the mayor shall serve a two-year or four-year term. In cities presently having elected mayors, the city council may also submit to the electors the question of whether the mayor shall thereafter serve a two-year or a four-year term.

*SEC. 6. Section 34901 of the Government Code is amended to read:*

34901. The questions shall be printed on the ballots used at the election in substantially the following form:

“Shall the electors elect a mayor and four city ~~councilmen~~ *council members*?”

“Shall the term of office of mayor be two years?”

“Shall the term of office of mayor be four years?”

The words “Yes” and “No” and “two years” and “four years” shall be so printed on the ballots that the voters may express their choice. The term of office of mayor shall be that preferred by a majority of those voting on the proposition.

~~SEC. 2.~~

*SEC. 7. Section 34902 of the Government Code is amended to read:*

34902. (a) If a majority of the votes cast on the proposition is for it, the office of mayor shall thereafter be an elective office, except as provided in subdivision (b). At the next succeeding general municipal election held in the city, one of the offices of city councilperson, to be filled at the election, shall be designated as the office of mayor, to be filled at the election. The person elected at the election as mayor shall hold office from the Tuesday succeeding his or her election, and until his or her successor is elected and qualifies.

1 In the case of a vacancy in the office of the mayor for any reason,  
2 the council shall fill the vacancy by appointment. If the council  
3 fails to fill it within 60 days, it shall call an election to fill the  
4 vacancy to be held on the next established election date to be held  
5 not less than 114 days thereafter. A person appointed or elected  
6 to fill a vacancy shall hold office for the unexpired term of the  
7 former incumbent.

8 (b) After an office of elective mayor has been established, the  
9 city council may subsequently submit to the electors the question  
10 of whether or not to eliminate the elective office of mayor, pursuant  
11 to the procedures enumerated in this article, and thereby reestablish  
12 the procedure of selection of the mayor by the city council. If a  
13 majority of the votes cast on the proposition are in favor of the  
14 elimination of the office of elective mayor, the office shall be  
15 eliminated on the expiration date of the incumbent's term, and on  
16 the date the procedure of selection of the mayor by the city council  
17 shall be reestablished.

18 *SEC. 8. Section 36508 of the Government Code is amended to*  
19 *read:*

20 36508. At any municipal election, or a special election held  
21 for that purpose, the city council may submit to the electors the  
22 question whether the elective officers, or any of them except  
23 ~~councilmen~~ *council members*, shall be appointed by the city  
24 council; provided, however, that the city council shall not submit  
25 such question to the electors more often than once in an 11-month  
26 period.

27 *SEC. 9. Section 36511 of the Government Code is amended to*  
28 *read:*

29 36511. The petition for incorporation of a city may provide  
30 for the appointment of the elective officers, or any of them except  
31 ~~councilmen~~ *council members*. If it does, a separate election upon  
32 the question need not be held, and upon incorporation the city  
33 council shall appoint such officers.

34 ~~SEC. 3.~~

35 *SEC. 10. Section 36512 of the Government Code is amended*  
36 *to read:*

37 36512. (a) If a vacancy occurs in an appointive office provided  
38 for in this chapter, the council shall fill the vacancy by  
39 appointment. A person appointed to fill a vacancy holds office for  
40 the unexpired term of the former incumbent.

1 (b) If a vacancy occurs in an elective office provided for in this  
2 chapter, the council shall, within 60 days from the commencement  
3 of the vacancy, either fill the vacancy by appointment or call a  
4 special election to fill the vacancy. The special election shall be  
5 held on the next regularly established election date not less than  
6 114 days from the call of the special election. A person appointed  
7 or elected to fill a vacancy holds office for the unexpired term of  
8 the former incumbent.

9 (c) Notwithstanding subdivision (b) and Section 34902, a city  
10 may enact an ordinance that does any of the following:

11 (1) Requires that a special election be called immediately to fill  
12 every city council vacancy and the office of mayor designated  
13 pursuant to Section 34902. The ordinance shall provide that the  
14 special election shall be held on the next regularly established  
15 election date not less than 114 days from the call of the special  
16 election.

17 (2) Requires that a special election be held to fill a city council  
18 vacancy and the office of mayor designated pursuant to Section  
19 34902 when petitions bearing a specified number of verified  
20 signatures are filed. The ordinance shall provide that the special  
21 election shall be held on the next regularly established election  
22 date not less than 114 days from the filing of the petition. A  
23 governing body that has enacted such an ordinance may also call  
24 a special election pursuant to subdivision (b) without waiting for  
25 the filing of a petition.

26 (3) Provides that a person appointed to fill a vacancy on the city  
27 council holds office only until the date of a special election which  
28 shall immediately be called to fill the remainder of the term. The  
29 special election may be held on the date of the next regularly  
30 established election or regularly scheduled municipal election to  
31 be held throughout the city not less than 114 days from the call of  
32 the special election.

33 (d) (1) Notwithstanding subdivision (b) and Section 34902, an  
34 appointment shall not be made to fill a vacancy on a city council  
35 if the appointment would result in a majority of the members  
36 serving on the council having been appointed. The vacancy shall  
37 be filled in the manner provided by this subdivision.

38 (2) The city council may call an election to fill the vacancy, to  
39 be held on the next regularly established election date not less than  
40 114 days after the call.

(3) If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.

*SEC. 11. Section 36515 of the Government Code is amended to read:*

36515. The compensation of a city ~~councilman~~ *council member* appointed or elected to fill a vacancy is the same as that payable to the member whose office was vacated.

*SEC. 12. Section 36516.1 of the Government Code is amended to read:*

36516.1. A mayor elected pursuant to Sections 34900 to 34904, inclusive, of the Government Code may be provided with compensation in addition to that which he *or she* receives as a ~~councilman~~. ~~Such council member. That~~ additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election.

*SEC. 13. Section 36516.5 of the Government Code is amended to read:*

36516.5. A change in compensation does not apply to a ~~councilman~~ *council member* during ~~his~~ *the council member's* term of office; ~~however, the prohibition herein expressed~~ *office. This prohibition* shall not prevent the adjustment of the compensation of all members of a council serving staggered terms whenever one or more members of ~~such~~ *the city council* becomes eligible for a salary increase by virtue of ~~his~~ *the council member* beginning a new term of office.

*SEC. 14. Section 36804 of the Government Code is amended to read:*

36804. If the city clerk is absent, the deputy city clerk shall act. If there is none, the mayor shall appoint one of the ~~councilmen~~ *council members* as city clerk pro tempore.

*SEC. 15. Section 36811 of the Government Code is amended to read:*

36811. If all ~~councilmen~~ *council members* are absent from any regular meeting, the city clerk shall declare the meeting adjourned to a stated day and hour. ~~He~~ *The city clerk* shall cause a written notice of the adjournment to be delivered personally to each ~~councilman~~ *council member* at least three hours before the adjourned meeting.

1     *SEC. 16. Section 50271 of the Government Code is amended*  
2     *to read:*

3     50271. When the mayor is unable to attend a meeting of a city  
4     selection committee, ~~he~~ *the mayor* shall designate another member  
5     of the city's legislative body to attend and vote at the meeting ~~in~~  
6     ~~his place and as his~~ *as the mayor's* representative.

7     ~~SEC. 4.~~

8     *SEC. 17. Section 57377 of the Government Code is amended*  
9     *to read:*

10    57377. Officers, except members of the city council, shall hold  
11    office until the first succeeding general municipal election held in  
12    the city and until their successors are elected and qualified. Of the  
13    five elected members of the city council, the two receiving the  
14    lowest number of votes shall hold office until the first succeeding  
15    general municipal election held in the city and until their successors  
16    are elected and qualified, and the three receiving the highest  
17    number of votes shall hold office until the second succeeding  
18    general municipal election held in the city and until their successors  
19    are elected and qualified. If two or more members of the city  
20    council are elected by the same number of votes, the terms of each  
21    shall be determined by lot. The members of the city council elected  
22    to succeed the members elected at the incorporation election shall  
23    hold office for four years from the Tuesday succeeding their  
24    election, and until their successors are elected and qualified.

25    ~~SEC. 5.~~

26    *SEC. 18. Section 57379 of the Government Code is amended*  
27    *to read:*

28    57379. If the first general municipal election following an  
29    incorporation election will occur less than one year after the  
30    effective date of incorporation, or occurred on or after November  
31    1, 1987, and less than one year after the incorporation election, of  
32    the five elected members of the city council, the two receiving the  
33    lowest number of votes shall hold office until the second general  
34    municipal election following the incorporation election and until  
35    their successors are elected and qualified, and the three receiving  
36    the highest number of votes shall hold office until the third general  
37    municipal election following the incorporation election and until  
38    their successors are elected and qualified.

39    The first general municipal election following the incorporation  
40    election shall not be held unless either a proposition is to be voted

1 upon or offices other than city council member offices are to be  
2 filled.

3 In the event that, pursuant to Section 56724, the first election  
4 for city council members was held after the election on the  
5 incorporation proposal, the term “incorporation election” in this  
6 section means the first election for city council members.

7 *SEC. 19. Section 65063.7 of the Government Code is amended*  
8 *to read:*

9 65063.7. No supervisor, mayor or city ~~councilman~~ council  
10 member shall hold office on the regional planning board after  
11 ceasing to hold the office of supervisor, mayor or city ~~councilman~~  
12 council member, respectively, and ~~his~~ that person’s membership  
13 on the board shall thereafter be considered vacant, except that any  
14 mayor who continues to hold office as a city ~~councilman~~ council  
15 member, or city ~~councilman~~ council member who continues to  
16 hold office as mayor, shall not be considered to have ceased to  
17 hold office under this section.

18 *SEC. 20. Section 40225 of the Health and Safety Code is*  
19 *amended to read:*

20 40225. No supervisor, mayor, or city ~~councilman~~ council  
21 member shall hold office on the bay district board for a period of  
22 more than three months after ceasing to hold the office of  
23 supervisor, mayor, or city ~~councilman~~ council member,  
24 respectively, and his or her membership on the bay district board  
25 shall thereafter be considered vacant, except that any mayor who  
26 continues to hold office as a city ~~councilman~~ council member, or  
27 any city ~~councilman~~ council member who continues to hold office  
28 as a mayor, shall not be considered to have ceased to hold office  
29 under this section.

30 *SEC. 21. Section 40326 of the Health and Safety Code is*  
31 *amended to read:*

32 40326. No supervisor, mayor, or city ~~councilman~~ council  
33 member shall hold office on a regional district board for a period  
34 of more than three months after ceasing to hold the office of  
35 supervisor, mayor, or city ~~councilman~~ council member,  
36 respectively, and his or her membership on the regional district  
37 board shall thereafter be considered vacant, except that any mayor  
38 who continues to hold office as a city ~~councilman~~ council member,  
39 or any city ~~councilman~~ council member who continues to hold



- 1 office as a mayor, shall not be considered to have ceased to hold
- 2 office under this section.

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